

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Case No. 20-12067 (BLS)
URSA OPERATING COMPANY,
LLC, *et al.*,
Debtors.
THE ROYALTY CLAIMANTS,
Appellants,
v.
URSA OPERATING COMPANY LLC, 824 Market Street
Wilmington, Delaware 19801
Appellee. April 16, 2024
10:37 a.m.

TRANSCRIPT OF ZOOM HEARING
BEFORE THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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Proceedings recorded by electronic sound recording:
transcript produced by transcription service.

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- and -

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1 (Proceedings commenced at 10:37 a.m.)

2 THE COURT: Good morning, all. This is Judge
3 Shannon. I understand from the court reporter that necessary
4 parties have joined.

5 This is a hearing in the matter of Ursa Operating
6 Company, which is Case Number 20-12067. This is a status
7 conference that the Court has scheduled in connection with
8 the Third Circuit's opinion reversing the opinion of the
9 District Court and this Court, and sending then the mandate
10 back down to this Court for further proceedings.

11 It has been a while since I've seen all of these
12 parties. It is good to see you and I hope that you're all
13 well.

14 The purpose that I have for today is really to
15 look for guidance and input from all of the parties with
16 respect to further steps. I have, obviously, carefully read
17 the Third Circuit's opinion and direction to this Court about
18 further proceedings, and I wish to do so efficiently and
19 promptly now that we do have the mandate that has been issued
20 by the Circuit.

21 I'm going to hear from everybody today, but I
22 think I'd like to start with hearing from counsel for the
23 debtor, and I would also -- I think I'd like to be guided by
24 whether the parties have had any opportunity to discuss and
25 perhaps map out what our next steps should be in terms of

1 scheduling and mechanics.

2 I see Mr. Enos on the line. Good morning and
3 welcome, sir.

4 Mr. Barton, it's been a while. It's good to see
5 you as well, sir.

6 MR. BARTON: Thank you, Your Honor. Good morning.

7 THE COURT: All right. Can I hear from Mr. Enos
8 first, but, as I said, I'll hear from everybody.

9 MR. ENOS: Thank you very much, Your Honor, and
10 good morning, Ken Enos, Young Conaway Stargatt & Taylor on
11 behalf of the debtor.

12 Your Honor, at the outset, yes, we actually did
13 have an opportunity to consult with counsel to the Royal
14 Claimants yesterday and, although we certainly appreciate
15 them taking the time to speak with us, I think it was time
16 worth spent -- excuse me, time well spent -- unfortunately,
17 but I suppose not surprisingly, we don't really see eye-to-
18 eye on where we should go from here.

19 Our view is -- and if you look back -- and,
20 believe me, this is not from my recollection, I had to read
21 the transcript -- if you look back at the transcript when
22 this issue was argued before the Court, we teed it up in a
23 way that there was three gating issues presented to you, and
24 you ruled in the debtors' favor with respect to one of those
25 issues. And, you know, reading between the lines, I'm

1 assuming you did not reach the other two issues because you
2 didn't feel you needed to.

3 The Third Circuit -- it went up on appeal before
4 the Third Circuit, the Third Circuit obviously reversed and
5 ruled in favor of the Royalty Claimants with respect to the
6 first issue, and that being that, under Colorado law, Royalty
7 Claimants do have a real property interest in the unpaid
8 royalties and that Colorado's constructive trust doctrine
9 supports the imposition of a constructive trust. And I'm
10 probably paraphrasing a bit there, but I believe that was the
11 gist of the ruling.

12 So that kind of leaves the two other issues that
13 we believe were argued before the Court ripe for
14 consideration, that being the effect of this Court's final
15 DIP order on the Royalty Claimants' property of
16 (indiscernible) argument; and then the second issue being
17 that whether the Royalty Claimants are able to identify and
18 trace the proceeds that they claim are in fact their
19 property.

20 Now, it's our view -- and I recognize that counsel
21 to the Royalty Claimants don't feel this way and, if I was in
22 their shoes, I probably would not either, but it's our view
23 that these two other gating issues should be addressed before
24 we do anything further, and I say that for a few reasons.

25 First off, as I pointed out, the issues were

1 already fully briefed, we believe the record is closed and,
2 subject to anything that the Court may want from the parties,
3 which we would be happy to provide, we don't think anything
4 further is really necessary for the Court to get up to speed
5 and rule on the issue.

6 The second point being is that the Court pointed
7 out at the hearing back in March -- and, again, this is from
8 reviewing the transcript -- as you pointed out, that hearing
9 was to kind of sort through some of the gated items to avoid
10 going into the weeds.

11 This is a liquidating estate with limited
12 resources. So I would suggest that we only go into the weeds
13 if the other issues are not found to be in our favor. They
14 have to be addressed anyway, so we view that it's important,
15 and it's most productive and efficient, to take those two
16 issues first before proceeding to kind of larger trial
17 preparations and the discovery and expense that would be
18 associated with those issues.

19 So, Your Honor, I think that is kind of the broad
20 view of where we think things stand and how we think the
21 Court should move forward. I'm happy to answer any questions
22 the Court may have, and then I don't know if Mr. Velevis or
23 Ms. Alfonso believe I missed anything or have anything to
24 add, but I believe that's the debtors' perspective on where
25 we should be heading.

1 THE COURT: No, I appreciate that. I don't have
2 any questions and I'd like to hear from either Mr. Velevis or
3 Ms. Alfonso, or anyone else on the debtors' side of this
4 equation, so that Mr. Barton has an opportunity to respond to
5 all of the comments and points that are being made. So I'm
6 happy to hear from counsel.

7 Mr. Velevis, I see you've turned your mike on.
8 Good morning, good to see you.

9 MR. VELEVIS: Good to see you too, Your Honor. I
10 turned my mike on only so that I could say I think that Mr.
11 Enos covered it from the debtors' perspective. Ms. Alfonso
12 may have additional input from the DIP lender's perspective.

13 THE COURT: Okay. Thank you.

14 Ms. Alfonso, did you wish to be heard?

15 MS. ALFONSO: Yes, thank you, Your Honor. For the
16 record, Ana Alfonso, Willkie, Farr & Gallagher, counsel for
17 Wells Fargo, which was the administrative agent and a lender
18 under the DIP facility and the prepetition RBL facility.

19 Your Honor, if I could go back in time, I might
20 have asked the Court to make a specific ruling protecting the
21 integrity of the DIP order. We did file papers in sort of a
22 me-too fashion many years ago, but we did not ask for a
23 ruling on that point, perhaps because I took it for granted
24 that I was so sure I was right about it that we wouldn't have
25 to go there and that maybe it would be easier for the parties

1 for Your Honor to focus on the ruling that Your Honor did
2 focus on.

3 That being said, we're now here, many years later,
4 and I'm still looking at the same DIP order that I believe is
5 crystal clear that this whole dispute is exactly the type of
6 thing that the admissions and the releases and the challenge
7 period deadline in the DIP order were designed to protect.
8 We haven't been driving the bus of this dispute, but the
9 lenders are paying for the gas and we're almost out of gas.

10 So what I would ask, respectfully, Your Honor, is
11 that if we could, before any ink gets spilt on discovery or
12 anything of that nature, that we have one more opportunity to
13 explain our position and walk the parties through the DIP
14 order and why we think that this dispute is time-barred.

15 THE COURT: Okay. Thank you, Ms. Alfonso.

16 Mr. Barton, good afternoon again, welcome. It's
17 good to see you -- or good morning, I guess. I'd like your
18 thoughts.

19 MR. BARTON: Your Honor, I'm going to have Ms.
20 Sawczuk initially address --

21 THE COURT: Sure.

22 MR. BARTON: -- these issues. Thank you.

23 THE COURT: Okay. Good morning, Ms. Sawczuk.
24 Good to see you, as always.

25 MS. SAWCZUK: Good morning, Your Honor, Maria

1 Sawczuk on behalf of the Royalty Claimants, and here we are.

2 Your Honor, I was actually a little shocked
3 yesterday when we had our conversations that we weren't
4 seeing eye-to-eye -- I shouldn't say shocked because we
5 haven't seen eye-to-eye in this case, but I thought given the
6 Third Circuit's ruling that we would all kind of know where
7 we were going and it would just be a matter of putting a
8 scheduling order together. The Third Circuit plainly sets
9 out what the next steps are. It says the Royalty Claimants
10 are correct that, under Colorado law, they have a real
11 property interest in unpaid royalties, and Colorado's
12 constructive trust doctrine supports a position of a
13 constructive trust if a fact finder concludes that Ursa was
14 unjustly enriched at the Royalty Claimants' expense.

15 And then, further down, it says the Bankruptcy
16 Court reserved for a future hearing whether Ursa made any
17 improper deductions and, if so, the amount of those
18 deductions as related to each Royalty Claimant. On remand,
19 additional fact-finding will be necessary to determine which,
20 if any, Royalty Claimants may be entitled to a constructive
21 trust remedy.

22 Your Honor, the court also goes on to say that the
23 -- to the extent that there is a finding that the Royalty
24 Claimants were not paid what they were supposed to be paid
25 and that the -- and that Ursa was unjustly enriched, these

1 assets, these dollars are not property of the estate and,
2 therefore, can't be -- can't be given as a DIP to the lender.

3 And, if you recall, Your Honor even said that when
4 we were asking for a stay or for a trust to be put into place
5 for these funds to be protected. We kind of conceded that
6 Wells Fargo isn't going anywhere and that, to the extent that
7 these funds are not property of the estate, they would be
8 returned to the claimants.

9 So I think at this point we just need to start
10 looking at whether or not the -- that Ursa was unjustly
11 enriched and that's going to involve some discovery. And I
12 know that the debtors don't want to do that, they have
13 resisted for, you know, nearly a decade now giving us any
14 documentation to prove our case, and much of it is in their
15 hands, although there will be some third party discovery
16 because -- and Mr. Barton can go into that, but I believe
17 that there's documents that other parties have that the
18 debtor may not have, but we need to just -- we need to find
19 out what the Royalty Claimants are owed because the
20 determination has been made that these funds, if we are owed
21 any, are not property of the estate and that a constructive
22 trust should be -- you know, should be imposed.

23 And as to the tracing issue, we don't even know
24 what we're tracing yet because we don't know if there's
25 monies there or not. So we've got to get to -- we've got to

1 get to the point where we know how much is owed to these
2 claimants and what we're exactly fighting over. And if that
3 involves a limited discovery just for that point, maybe we go
4 there first, but, quite frankly, I think the ball is ready to
5 roll now on each of these adversary actions, and we need to
6 get a scheduling order in place and start discovery.

7 And I'll give it to Mr. Barton to add anything
8 that I may have missed in that presentation because I know he
9 does have thoughts on this as well.

10 THE COURT: Sure. Mr. Barton?

11 MR. BARTON: Thank you. Let me give you sort of a
12 sense, Your Honor, of what the discovery is that we really
13 need. There's an eight-year period of time that's involved
14 here, and a company called Antero Resources sold its oil and
15 gas interest in Garfield County to Ursa back in 2012. And so
16 the period of time for the Royalty Claimants' underpayment
17 claims against Ursa extend through 2012 -- actually, December
18 of 2012 through December of 2020, when Ursa's sale to Terra
19 Energy Partners was accomplished.

20 And the way I believe Ursa kept track of its
21 royalty accounting was that initially Ursa was doing its own
22 royalty accounting and, you know, paying the royalties out to
23 the Royalty Claimants in this case, as well as the members of
24 the proposed class in the adversary proceedings as well, but
25 there came a point in time prior to Ursa's bankruptcy filing

1 where Ursa delegated that duty to a third party. And so that
2 third party then has the royalty accounting data from
3 whenever their responsibilities commenced through the date of
4 the bankruptcy and beyond, as far as I know.

5 In addition to that, what happens in these cases,
6 Your Honor -- and I think it's true today as well -- is that
7 some of the products that come from the Royalty Claimants'
8 wells actually end up being transferred to a third party
9 processing company, in this case I think the processing
10 company was Enterprise, and then Enterprise ends up
11 processing the gas and transporting the valuable natural gas
12 liquid product to a fractionation facility, after which it's
13 fractionated and sold to the third party purchasers of those
14 natural gas liquid products. This information is critically
15 important in connection with determining the amount of the
16 royalty underpayments that are owed to the Royalty Claimants
17 in this case.

18 So to give you a sense of it, there is going to be
19 some, you know, discovery on royalty accounting and it has to
20 come directly from Ursa, some that has to come from a third
21 party that Ursa hired to do its royalty accounting services,
22 and some from a third party that did the processing and
23 actually sold the natural gas liquid products. That's data
24 that we need to get and, you know, I believe that we need to
25 have a scheduling order in place that allows us to get this

1 information efficiently. We've done this in scores of other
2 cases, we've actually done it, you know, in the underlying
3 litigation against Antero, which was Ursa's predecessor, but
4 we don't have the data for the eight-year period from
5 December 2012 to December 2020, and that's what we need to
6 get.

7 And we certainly -- we also need to get data
8 related to the tracing of Ursa's assets. We know -- and,
9 obviously, I have a copy of the sale transaction under which
10 Ursa sold its assets to TEP and was paid \$60 million in
11 exchange for that, but at this point we don't know the
12 details, any of the details with respect to, you know, how
13 that money was later transferred and provided to Wells Fargo
14 and the other secured lenders.

15 As Your Honor will recall, we did seek a stay of
16 the distribution to Wells Fargo and the other secured lenders
17 back when this case was before Your Honor prior to our appeal
18 to the District Court and to the Third Circuit, but Your
19 Honor denied that request, but you did say, in pertinent
20 part, that if we were successful on appeal, we certainly
21 should have and would have the right to pursue, you know, the
22 secured lenders who hold the money, and maybe nearly all the
23 money, that's at issue with respect to the royalty owners'
24 claim -- Royalty Claimants' claims against Ursa.

25 And so all of that is the type of discovery that

1 we need to get, and related to other discovery related to the
2 tracing of the assets.

3 So, with respect to the DIP claim that was
4 referenced by opposing counsel, you know, the only thing I'm
5 going to say is this, that there was a procedural issue that
6 came up and that Ursa argued in the Third Circuit on its
7 petition for rehearing that the Court should modify its
8 opinion and allow Your Honor in the first instance to, you
9 know, make a ruling on the DIP issue. It didn't say it was a
10 preferred issue or it was a gatekeeping issue, nor did it say
11 that its comments in the original opinion, which I know Your
12 Honor has access to, were in any way wrong or erroneous in
13 which it rejected out of hand the whole DIP argument.

14 So, you know, our view is that there's no case law
15 anywhere that supports any of their arguments on this DIP
16 claim, and there's no basis whatsoever for that issue to have
17 some sort of priority gatekeeping function in this
18 litigation. I think that's wrong and I'm not aware of any
19 authority that would permit that.

20 So I think we need to get a scheduling order in
21 this case. We don't have a scheduling order, we never have.
22 There's no discovery that's been conducted in this case, and
23 we need to have the discovery move forward so that we can get
24 the data that we need in able to file dispositive motions
25 with respect to all -- or most -- I shouldn't say all -- most

1 of the Royalty Claimants' claims.

2 MR. ENOS: Your Honor, may I respond?

3 THE COURT: Mr. Enos, sure.

4 MR. ENOS: Yes, just two points, Your Honor.

5 First off, on the DIP issue, as Mr. Barton pointed out, I
6 think it is noteworthy that in the -- after we filed the
7 petition for rehearing that language was struck out of the
8 opinion, therefore -- thereby reserving that issue for the
9 Court to interpret its own orders. I think that's important
10 to note.

11 And I recognize what Mr. Barton said about the
12 Court, you know, had in the original opinion about that DIP
13 order. However, first off, that was not in the final opinion
14 and, second, I think there's a very large difference between
15 the Court dismissing certain arguments made by the appellants
16 in a brief versus the Court considering your interpretation
17 and review and ruling on the impact of that DIP order. So I
18 think those are two very important points.

19 I'm not going to get into the substance of Mr.
20 Barton's arguments. Obviously, as a bankruptcy practitioner,
21 we very much disagree with his interpretation of the
22 importance of the language in that DIP order, but I'll leave
23 it at that.

24 And then the second point, Your Honor, regarding
25 the tracing issue, I will point out -- and Ms. Sawczuk, I'm

1 sure she -- she is correct, she quoted directly from the
2 beginning of the opinion, but I think she left out and she
3 didn't mention kind of one of the final paragraphs of the
4 opinion where the Third Circuit noted that, although a
5 constructive trust is an available remedy under Colorado law,
6 none of this absolves the Royalty Claimants of their
7 responsibility of identifying the funds that they assert to
8 be equitably theirs. And also following the petition for
9 rehearing the court included a footnote that made it clear
10 that further discovery is up to the discretion of Your Honor.

11 So I think the Third Circuit's ruling is very much
12 -- it's a puzzle piece that fits very well with kind of what
13 we are proposing the Court to do at this time with respect to
14 kind of handling these issues in a succession, as opposed to
15 all at once.

16 Thank you.

17 THE COURT: Thank you, Mr. Enos.

18 Ms. Alfonso, did you want the last word?

19 MS. ALFONSO: One last word, Your Honor. I won't
20 respond to everything point-by-point. We've all argued about
21 this for years, so I think it's pretty what everyone's
22 positions are, but just on the tracing point. Mr. Barton
23 mentioned a need to trace proceeds of collateral to Wells,
24 that's not really the tracing issue here. The question here
25 is tracing the underpayments to the estate; that is the issue

1 of tracing that has to be established for purposes of
2 confirming the existence of a RES to which a constructive
3 trust can attach and, for all the reasons we've previously
4 stated and would be happy to explain again, there is no such
5 RES.

6 Thank you, Your Honor.

7 THE COURT: Okay.

8 MS. SAWCZUK: Your Honor, may I just make one
9 comment --

10 THE COURT: Sure.

11 MS. SAWCZUK: -- with respect to what Mr. Enos
12 said. The language that he quoted I omitted from the
13 footnote about we express no opinion on whether the
14 Bankruptcy Court must reopen discovery and we'll defer to its
15 sound discretion, that is accurate, that is in the footnote,
16 and I did not quote it because we never had discovery and the
17 Third Circuit doesn't know that. They just know that an
18 adversary action came up to them and one would assume that
19 discovery would have occurred and then matters would have
20 been resolved.

21 So, you know, we haven't done discovery yet,
22 that's the whole point. We need to now do discovery. We
23 need to get to the point of finding out how much this money
24 is and then tracing it. Yes, we do need to trace it, but we
25 can't do that until we know what we're tracing, and that's

1 what the discovery is going to do.

2 THE COURT: Thank you.

3 All right, here's what we're going to do. I
4 certainly understand the bid and the ask between the parties,
5 and I'm not surprised even a little that there's not
6 consensus on what the appropriate path forward is, but it was
7 helpful to me to get reacquainted with all of these issues.
8 I've obviously reviewed the file and the materials, as well
9 as the opinions. I'm going to essentially take this matter
10 under advisement. I expect to send a letter to counsel today
11 -- probably not today, probably tomorrow, after I've had an
12 opportunity to get my arms all the way around the competing
13 positions the parties have, and it will identify from my
14 point of view the path forward for this proceeding.

15 Again, I think I understand with perfect clarity
16 the different opinions -- or the different positions stated
17 by the parties and, obviously, I have my marching orders
18 coming down from the Circuit with respect to further
19 proceedings on remand. So I don't think I have any questions
20 for the parties. I want the opportunity, rather than just
21 off the cuff today, to provide direction. So I want to
22 review the file and I, again, expect to provide the parties
23 with direction by letter by tomorrow.

24 Are there any questions?

25 COUNSEL: No, Your Honor.

1 THE COURT: All right, very good.

2 Well, again, it was a pleasure to see everybody
3 back and all well after a few years. And the pandemic is
4 over, so that's good. And I'll be in touch with you and I
5 expect to be in touch with the parties promptly to keep the
6 matter moving forward as directed by the Circuit.

7 Thanks again, Counsel. Have a good day.

8 COUNSEL: Thank you, Your Honor.

9 (Proceedings concluded at 11:00 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ Tracey J. Williams

April 25, 2024

Tracey J. Williams, CET-914

Certified Court Transcriptionist

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